

JUDGE'S COPY

YORK County Prison,  
3400 Concord Road. 17  
YORK, P.A. 17402  
Date September 6<sup>th</sup> 2001  
NAME: DESMOND V. GAYLE  
ID# 55438  
INS# A74-891-110  
Immigration

To: The Honorable  
William W. Caldwell (Judge)  
United States District Court  
Middle District of Pennsylvania  
United States Courthouse  
228 Walnut Street  
P.O. Box 983  
HARRISBURG, P.A. 17108

FILED  
HARRISBURG

SEP 10 2001

MARY E. D'ANDREA, CLERK  
Per: [Signature]  
DEPUTY CLERK

On this 6<sup>th</sup> Day of September, the year 2001

Petitioner: DESMOND V. GAYLE

Filed this Motion, to be Release From the Custody of  
INS, By the United States Attorney General JOHN  
ASHCROFT, STUART E. SCHIFFER Deputy And Christopher  
C. Fuller Senior Litigation Officer.

I AM Requesting Release Under the New Rules of the  
Supreme Court, that came in effect July 2001.  
IN ZADNYDAS V. DAVIS 121 S. CT 2491 (U.S. June 2  
2001)

## FINANCIAL AFFIDAVIT

CJA 23  
(Rev. 5/98)

IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT OR OTHER COURT SERVICES WITHOUT PAYMENT OF FEE

IN UNITED STATES ☐ MAGISTRATE ☐ DISTRICT ☒ APPEALS COURT or ☐ OTHER PANEL (Specify below)

IN THE CASE OF

Nelson R. Penalver vs.

FOR

Appeal For Denial

AT

Supreme Court of Pennsylvania 2 TIMES.

PERSON REPRESENTED (Show your full name)

Nelson Roviara Penalver

CHARGE/OFFENSE (describe if applicable & check box → ☒ Felony ☐ MisdemeanorPossession with intent to deliver  
a controlled substance.

- ☒ Defendant - Adult  
☐ Defendant - Juvenile  
☐ Appellant  
☐ Probation Violator  
☐ Parole Violator  
☐ Habeas Petitioner  
☐ 2255 Petitioner  
☐ Material Witness  
☐ Other (Specify)

LOCATION NUMBER

# 0209

DOCKET NUMBERS

Magistrate

District Court

Court of Appeals

2396 CD

## ANSWERS TO QUESTIONS REGARDING ABILITY TO PAY

ASSETS	EMPLOY- MENT	Are you now employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Am Self Employed.
		Name and address of employer: _____
		IF YES, how much do you earn per month? \$ _____ IF NO, give month and year of last employment _____ How much did you earn per month? \$ _____
		If married is your Spouse employed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No IF YES, how much does your Spouse earn per month? \$ _____ If a minor under age 21, what is your Parents or Guardian's approximate monthly income? \$ _____
OTHER INCOME	Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES	
CASH	Have you any cash on hand or money in savings or checking account <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No IF YES, state total amount \$ _____	
	Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
PROP- ERTY	VALUE DESCRIPTION	
	IF YES, GIVE THE VALUE AND \$ DESCRIBE IT	

OBLIGATIONS & DEBTS	DEPENDENTS	MARITAL STATUS <input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED <input type="checkbox"/> WIDOWED <input checked="" type="checkbox"/> SEPARATED OR DIVORCED	Total No. of Dependents 4	List persons you actually support and your relationship to them Amanda Penalver Miaa Penalver Christopher Penalver Nelson Penalver
		DEBTS & MONTHLY BILLS (LIST ALL CREDITORS, INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)	APARTMENT OR HOME I LIVE IN A HALF WAY HOUSE	Creditors CAPITOL PAVILLION - 717-236-2132 2012 N. 4th ST., HARRISBURG, PA. 17102

I certify under penalty of perjury that the foregoing is true and correct. Executed on (date)

SIGNATURE OF DEFENDANT  
(OR PERSON REPRESENTED)Nelson Roviara Penalver  
9/6/01

OVER →



# Supreme Court of Pennsylvania Middle District

JOAN L. STEHULAK, ESQUIRE  
DEPUTY PROTHONOTARY  
SHIRLEY BAILEY  
CHIEF CLERK

September 22, 1998

434 MAIN CAPITOL BUILDING  
P.O. BOX 624  
HARRISBURG, PENNSYLVANIA 17108  
(717) 787-6181  
<http://www.courts.state.pa.us>

TO: Francis M. Socha, Esquire

RE: COMMONWEALTH OF PENNSYLVANIA

RESPONDENT

V.

NELSON R. PENALVER

PETITIONER

No. 0209 M.D. Allocatur Docket 1998

Dear Counsel:

This is to advise you that the attached order has been entered on the Petition for Allowance of Appeal filed in the above-captioned matter.

Very truly yours,  
Office of the Prothonotary  
Supreme Court of Pennsylvania

SB/aks

c: Hon. Richard A. Lewis  
Dauphin; 2396CD94  
Criminal Division  
Jeffrey B. Engle, Deputy District Attorney

IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA

: No. 209 Middle District

: Allocatur Docket 1998

Respondent

V.

NELSON R. PENALVER

Petitioner

: Petition for Allowance of Appeal

ORDER

PER CURIAM

AND NOW, this 22nd day of September, 1998, the Petition  
for Allowance of Appeal is denied.

TRUE & CORRECT COPY

**ATTEST:**

SEP 22 1998

SEP 22 1998  
Shirley Bailey  
SHIRLEY BAILEY  
CHIEF CLERK

IN THE SUPREME COURT OF PENNSYLVANIA  
FOR THE MIDDLE DISTRICT

NO. M.D. ALLOCATUR DOCKET, 1998

COMMONWEALTH OF PENNSYLVANIA,

Respondent

vs.

NELSON R. PENALVER,

Petitioner

PETITION FOR ALLOWANCE OF APPEAL

Petition for Allowance of Appeal by NELSON R. PENALVER  
from the Order of the Superior Court at  
No. 401 Harrisburg 1997, dated March 13, 1998, affirming judgment  
of sentence of the Dauphin County Court  
of Common Pleas at No. 2396 CD 1994

FRANCIS M. SOCHA, ESQ.  
2201 North Second Street  
Harrisburg, PA 17110  
(717) 233-4141

Dated: March 20, 1998

Attorney for Petitioner

Received in Supreme Court

MAY 23 1998

Minda

IN THE SUPERIOR COURT  
OF PENNSYLVANIA

---

No. 401 Harrisburg 1997

---

COMMONWEALTH OF PENNSYLVANIA,

Appellee

vs.

NELSON R. PENALVER,

Appellant

Received in Superior Court

SEP 11 1997

THOMAS J. HARRIS

---

BRIEF FOR APPELLANT

---

Appeal from the Order  
of the Honorable Richard Lewis  
Court of Common Pleas, Dauphin County,  
Dated April 3, 1997, and  
Docketed at 2396 C.D. 1994

---

FRANCIS M. SOCHA, ESQ.  
2201 North Second Street  
Harrisburg, PA 17110  
(717) 233-4141

Attorney for Appellant

4

LAW OFFICES  
**FRANCIS M. SOCHA**  
2201 NORTH SECOND STREET  
HARRISBURG, PENNSYLVANIA 17110

FRANCIS M. SOCHA  
CLAYTON W. DAVIDSON

TELEPHONE (717) 233-4111  
FAX (717) 233-2342

September 28, 1998

Nelson Penalver  
Temp-3E48 (24696)  
3000 Perdidos St.  
New Orleans, LA 70119

Dear Mr. Penalver:

Enclosed is a copy of the Pennsylvania Supreme Court's Order denying your petition for allowance of appeal. Unfortunately, this concludes my representation with your case.

If you still would like to challenge your conviction, I suggest that you contact the Federal Public Defender's Office at 100 Chestnut Street, Suite 306, Harrisburg, Pennsylvania, 17101 (Phone # 717-782-2237) and file a writ of habeas corpus in Federal Court for the Middle District of Pennsylvania.

I wish you the best in the future.

Sincerely,

  
Francis M. Socha

\cec  
Enclosure

TO US DISTRICT COURT.  
IN THE appeal THERE WAS SOME ERRORS. I WAS TAKEN  
TO LOUISIANA BY THE GOVERNMENT. THERE IS A COMPLAINT:  
APPEAL ALREADY DONE IN LOUISIANA...  
Respectfully  
Nelson Penalver  
9-6-01  
8



Docket # 2396 CD: IN 1994  
*since*

The Commonwealth presented testimony that the appellant, delivered ten (10) bags of crack cocaine to Officer Pelino. [N.T. 25, lis. 15-16; N.T. 36, lis. 6]. The testimony indicated, however, that the appellant was never seen physically handing the undercover officer any narcotics. [N.T. 25, lis. 15-16]. No narcotics were found on the appellant's person when he was taken into custody. [N.T. 54, lis. 15-22]. No corroborating fingerprints were taken from any of the confiscated packages. [N.T. 48, lis. 24-25; N.T. 48, lis. 8].

The confidential informant that was present with Mr. Penalver was never patted down and searched prior to the transaction in this case. [N.T. 44, lis. 20-23]. The extent of the informant's association with this particular police operation was one prior incident. [N.T. 39, lis. 4-6]. No background check was performed on the informant so as to test the informant's veracity and reliability. [N.T. 38, lis. 15-16].

The conviction in this instance was based on the speculation of an undercover officer who never saw the appellant hand him any controlled substance. The search of the appellant incident to his arrest produced no narcotic substances. [N.T. 54, lis. 15-22]. The Commonwealth bases its conjectured claim of delivery of a controlled substance on the reliability of an informant the undercover agents hardly knew. [N.T. 30, lis. 15-16]. The agents never had the time or inclination to run a prior records check on a person that induced the entire transaction. [N.T. 38, lis. 15-16]. Further, the informant was not checked prior to the transaction for possession of a controlled substance. [N.T. 44, lis. 20-23]. It was sheer speculation on the part of Officer Pelino to assume that the appellant carried and delivered crack cocaine when nothing was done to insulate appellant from a problematic informant.

*Nelson Robin Penley*  
~~A-244527~~



<b>U.S. AIRWAYS</b>			
BOARDING PASS			
**ETKT BP** MAC/MSY			
NAME OF PASSENGER <b>ROUIRA PENALVER/NELS</b>			
FROM <b>CHARLOTTE</b>			
TO <b>HARRISBURG INTL</b>			
CARRIER <b>US AIRWAYS</b>			
CODE <b>US358</b>	FLIGHT <b>Y</b>	CLASS <b>04SEP</b>	TIME <b>650P</b>
GATE <b>C19</b>	BOARDING TIME <b>620P</b>	SEAT <b>8A</b>	SMOKING <b>NO</b>
DIVIDEND MILES NUMBER <b>2 037 7049166093 4</b>			
<b>CONNECTION</b>			

<b>U.S. AIRWAYS</b>			
BOARDING PASS			
**ETKT BP** MAC/MSY			
NAME OF PASSENGER <b>ROUIRA PENALVER/NELS</b>			
FROM <b>NEW ORLEANS</b>			
TO <b>CHARLOTTE</b>			
CARRIER <b>US AIRWAYS</b>			
CODE <b>US188</b>	FLIGHT <b>Y</b>	CLASS <b>04SEP</b>	TIME <b>314P</b>
GATE <b>6A</b>	BOARDING TIME <b>244P</b>	SEAT <b>22E</b>	SMOKING <b>NO</b>
DIVIDEND MILES NUMBER <b>1 037 7049166093 1</b>			

9-6-01

United states District Court  
 Petitioner Consent to witness.


*Respectfully*  
*Walter R. Gresham*  
 CP-6160

Page 1


ATTENTION MR BOWMAN  
 ROVIRA PENALVER/NELSON

04Sep01 13:28:02

The booking locator is ETLACZ. The fare is \$131.50.

 04Sep01 03:14pm **AIR** Us Airways Flight# 188 Class: Y  
 Tuesday From: New Orleans LA, USA To: Charlotte NC, USA  
 Meal: None Status: Confirmed  
 Equip: Boeing 737-400  
 Arrival: 04Sep01 Tuesday 06:10pm

Us Airways locator: CNUZAP

 04Sep01 06:50pm **AIR** Us Airways Flight# 358 Class: Y  
 Tuesday From: Charlotte NC, USA To: Harrisburg Intl PA, USA  
 Meal: None Status: Confirmed  
 Equip: Boeing 737-300  
 Arrival: 04Sep01 Tuesday 08:18pm  
 Seat: 8A

Us Airways locator: CNUZAP

04Jul02 **OTHER**  
 Thursday Jacksonville NC, USA  
 OMEGA WORLD TRAVEL

\*\*\*\*\*  
**\*\*\*HEADQUARTERS DC INS PASSENGERS PLEASE CALL**  
 \*\*\*\*\*  
**\*\*\*\*\*202-305-1058\*\*\*\*\***  
 \*\*\*\*\*

ALL FREQUENT FLYER MILES ACCRUED WHILE ON GOVT TRAVEL  
 ARE THE SOLE PROPERTY OF THE U.S. GOVERNMENT.  
 24 HOUR EMERGENCY SERVICE CENTER..1-800-685-6342  
 PLEASE GIVE YOUR ID CODE.....5WN1-INS AND  
 IDENTIFY YOUR MAIN SERVICING BRANCH AS 5WN1 ALSO.

\*\*\*\*\*  
 PLEASE RETURN UNUSED TICKETS TO OUR OFFICE  
 FOR A REFUND. PLEASE SEND THE TICKETS TO  
 THE FOLLOWING ADDRESS...  
 OMEGA WORLD TRAVEL  
 ATTN REFUND DEPT  
 325 WHITE STREET  
 JACKSONVILLE, NC 28546

\*\*\*\*\*  
**S1AIRPORT CHECKIN ONLY FOR SEAT**  
**S\*G675**  
**U11-1528-INS**  
**U12-INS**  
**U13-A24452734**  
**U9-X**  
**U7-D**  
**U2-60**  
**U8-504-589-2804-B/BOWMAN**

CP 6160

6

## Print Key Output

5759551 V4R4M0 990521

TANGI400

04/03/01

Page 1

13:57:34

Display Device . . . . . : J5

User . . . . . : NANCYLEE

CM5400-DE

TPSD Prisoner Transaction Inquiry

13:56:54 4/03/01


Pin: 1016553 Bk #: 1 Name: ROVIRA NELSON PENALVER

Account Balance: 14.23CR

Trans#	Date	Time	Description	Off #	Amount	Balance
43	11/28/00	6:31	DEF 120100	535	7.00CR	33.14CR
44	11/22/00	11:53	DEF 112400	535	7.00CR	26.14CR
43	11/21/00	8:22	ZZ	547	4.70	19.14CR
42	11/13/00	9:07	ZZ	547	4.20	23.84CR
41	11/10/00	10:25	ZZ	547	.60	28.04CR
40	11/09/00	10:01	DEF 111700	535	7.00CR	28.64CR
39	11/08/00	9:09	ZZ	547	6.23	21.64CR
38	11/02/00	9:44	DEF 111000	535	7.00CR	27.87CR
37	10/31/00	7:56	ZZ	547	6.00	20.87CR
36	10/26/00	8:46	DEF 110300	535	7.00CR	26.87CR
35	10/23/00	8:36	ZZ	547	10.84	19.87CR
34	10/20/00	7:40	DEF 102700	535	7.00CR	30.71CR
33	10/16/00	13:01	ZZ	547	6.97	23.71CR +

F2=Back Screen

U.S. District Court  
HARRISBURG, PA.

Respectfully  
  
 CP-6160

5III. QUESTIONS PRESENTED FOR REVIEW

1. DID THE SUPERIOR COURT ERR IN AFFIRMING THE LOWER COURT'S RULING THAT TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO REQUEST A MISSING WITNESS INSTRUCTION AFTER THE COMMONWEALTH FAILED TO CALL A MATERIAL WITNESS?

United STATE Distric Court. -9-06-01

THIS is my statement, The Petitioner Nelson R. Pena  
I came from LUSIANA on Sept-4-01. Copy of arrival  
Enclosed. I'm including a copy of AIRLINE Tickets.  
I Have 2 Lawsuits To The Federal Eastern Dist. Court  
of Luishana, For denied Equal Right constitution...

THE Following evidence are being sent To you,  
because The prosidier was not done in Time, The  
Court Took Too long, and Then I was denied.  
I belived I Have right as I requested To  
Plead The Fifth. The Supreme Court ~~Has~~ The Denial  
And THE superial Court Has gave me THE right  
To appeal. IF you need To contact me at 717-236-  
Respectfully  
Thank You. Nelson R. Pena



U.S. Department of Justice  
UNITED STATES MARSHALS SERVICE

**NOTICE AND ACKNOWLEDGMENT OF RECEIPT  
OF SUMMONS AND COMPLAINT BY MAIL**

United States District Court

for the

Eastern

District of

Louisiana

TO:

U. S. Attorney General  
10th & Constitution Avenue NW  
Room 4400  
Washington, D.C. 20530

Civil Action, File Number 01-782-N (2)

Nelson Rovira Penalver

V.

Anne K. Fenton, Phillip T. Miller  
Mr. Holbrook and Kenneth M. Jaram

The enclosed summons and complaint are served pursuant to Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure.

You **MUST COMPLETE** the acknowledgment part of this form below, **AND RETURN COPIES 1 AND 2** to the sender within 20 days. An envelope has been enclosed for this purpose. Keep copy 3 for your records.

**YOU MUST SIGN AND DATE THE ACKNOWLEDGMENT ON ALL COPIES.** If you are served on behalf of a corporation, unincorporated association (including a partnership), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return copies 1 and 2 of this form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return copies 1 and 2 of this form, you (or the party on whose behalf you are being served) must return the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint By Mail was mailed on this date. PLEASE RETURN RECEIPT BY May 5, 2001

04-25-01

Date of Signature

*Mary Rose Christopher*  
Signature (USMS Official)

**ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT**

I declare, under penalty of perjury, that I received a copy of the summons and of the complaint in the above captioned case at

Street Number and Street Name or P.O. Box No.

City, State and Zip Code

Signature

Relationship to Entity/Authority to Receive  
Service of Process